IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 31907 of 2005(W)

AGAINST THE ORDER DATED 08/07/05 IN IA 2067 2004 IN OS.214/2001 of MUNSIFF COURT, TIRUR

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PETITIONERS:

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1. THARAKKAL MAMMI, AGED 46 YEARS,
   S/O.LATE MOIDEEN, P.O.PAIKANNUR, TIRUR TALUK,
   MALAPPURAM DISTRICT.

2. THARAKKAL YOUSUF, AGED 49 YEARS,
   S/O.MOIDEEN (LATE) DO. DO.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA

RESPONDENT:

P.P.FATHIMA KUNHIMMU, D/O.ABU HAJI,
PUTHUSSERIPPARAMBIL HOUSE, TIRUR TALUK,
KUTTIPPURAM AMSOM, P.O. PAINKANNUR,
MALAPPURAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 31907 OF 2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE FIRST PETITINER HEREIN IN IA NO.2067 OF 2004 IN OS NO.214 OF 2001 BEFORE THE MUNSIFF'S COURT, TIRUR.

EXT.P2 : TRUE COPY OF THE ORDER DT.08.07.05 IN IA NO.2067 OF 2004 IN OS NO.214 OF 2001 OF THE MUNSIFF'S COURT, TIRUR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31907 OF 2005

Dated this the 28th day of June, 2007

JUDGMENT

The petitioner who is the third defendant in OS No.214 of 2001 is aggrieved in that the court below by passing Ext.P2 order has allowed impleadment of the legal heirs of deceased defendants 1 and 2 in the suit even without notice to all the legal heirs of those defendants. The first defendant died as early as on 03.10.01 and second defendant died on 02.09.02. The counsel who was appearing for those defendants reported the matter to the court on time as required under Order XXII Rule 10 A. The plaintiff, however, did not take steps for impleading the legal heirs of the deceased defendants. On 29.08.02 noticing that the first defendant is no more and the plaintiff has not taken any steps for impleading his legal heirs the court passed the following order : No steps taken on relief sought against D1, dismissed." More than two years thereafter, the plaintiff filed the present IA seeking impleadment of the legal representatives of the first defendant and also the second defendant who has already indicated as expired in the meanwhile on 02.09.02. By Ext.P2 the above application has been allowed, though serious objections, Ext.P1, was filed by the petitioner to the same. Sri.K.Ramachandran, learned counsel for the petitioner addressed two

arguments. First is that the court below was not justified in entertaining the application for impleading the legal heirs of the deceased first defendant in the light of the order on 29.08.02 declining relief as against the first defendant. Secondly, learned counsel argued that at any rate the order allowing impleadment without even issuing notice to the proposed additional defendants is illegal and violative of High Court Circular No.17/66 dt.23.8.06 I will immediately observe that that I notice merit in both these arguments. But at the same time I am leaving the decision on the first argument to be taken by the learned Munsiff himself, if the same is urged before him by the proposed additional respondents and also the present writ petitioner. I set aside Ext.P2 since the same is passed obviously without notice to the proposed additional defendants(the legal heirs of deceased defendants 1 and 2 other than defendants 3 and 4). The court below will issue notice to the proposed additional defendants invite objections and consider those objections along with Ext.P1 objection filed by the present petitioner, hear all the parties and pass fresh orders in the IA.

The Writ Petition is allowed as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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